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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/604,046	06/24/2003	James H. Wright	WRIGP001US	1045
27949 7590 10/14/2008 LAW OFFICE OF JAY R. YABLON 910 NORTHUMBERLAND DRIVE SCHENECTADY, NY 12309-2814				
EXAMINER				
JOYNER, KEVIN				
ART UNIT		PAPER NUMBER		
1797				
MAIL DATE		DELIVERY MODE		
10/14/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/604,046

**Applicant(s)**

WRIGHT, JAMES H.

**Examiner**

KEVIN C. JOYNER

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 September 2008.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 and 12-60 is/are pending in the application.  
4a) Of the above claim(s) 17-20, 22 and 30-60 is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-10, 12-16, 21 and 23-29 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-10, 12-16, 21, 23-25, 27 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lillelund et al. (U.S. Patent No. 4,923,085) in view of Allen et al. (U.S. Patent No. 5,515,995).

Lillelund discloses an apparatus that is capable of being utilized as an anti-splash, anti-spill fluid-holding apparatus (referenced as a container), comprising:

an inner side surface comprising an inner mid section diameter thereof continuing inwardly to an inner upper section diameter thereof which is smaller than said inner mid section diameter, from more than side cross-sections (Figures 9 and 10);

an outer side surface further comprising an outer diameter thereof which, between said outer lower section diameter and an outer upper section diameter thereof, substantially never increases when moving from any lower circumference thereof to any higher circumference thereof, from more than two side cross-sections (Figure 1);

an open top circumscribed by said inner upper section diameter (Figure 2);

an inward angle comprising a less than 90 degree angle tangential to any point along said inner side surface from said inner mid section diameter to said inner upper section diameter, from more than two side cross-sections, wherein said inward angle is greater than zero degrees at said open top (column 5, lines 5-10; Figures 9 and 10);

a base circumscribed by said outer lower section diameter; and  
said inner side surface, said outer side surface, said inward angle, said open top which is smaller than said inner mid section diameter, and said base circumscribed by said outer lower section diameter which is larger than said outer mid section diameter, all comprising a single, unitary article of fabrication (Figures 1 and 2), wherein the container of Lillelund is further provided with a lid to seal said container. More specifically, as shown in Figures 9 and 10, the upper inner section of Lillelund angles inwardly in order to provide friction between the lid and said upper inner portion (column 5, lines 5-10).

Lillelund does not appear to disclose the type of material that the container is made from. However, it is extremely well known in the art of containers with lids to comprise the containers from a rigid material with the rigidity substantially similar to that of a shot glass. Allen discloses an apparatus that is capable of being utilized as an anti-splash fluid holding container comprising a lid (Figure 1) to seal said container, wherein the container further comprises:

An inner side surface comprising an inner mid section diameter thereof and an inner upper section diameter thereof;

An outer side surface comprising an outer mid section diameter thereof continuing to an outer lower section diameter thereof which is larger than said outer mid section diameter, from more than two side cross-sections;

Said outer side surface further comprising an outer diameter thereof which between said outer lower section diameter and an outer upper section diameter thereof, substantially never increases when moving from any lower circumference thereof to any higher circumference thereof, from more than two side cross-sections; and

An open top circumscribed by said inner upper section diameter as shown in Figure 3. The reference continues to disclose that the container is made from a plastic material, which is a material with the rigidity substantially similar to that of a shot glass (column 8, lines 1-9), as it is commonly well known in the art comprise containers from a material that is substantially similar to that of a shot glass in order to provide a stable support material. Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to comprise the container of Lillelund from a material with the rigidity substantially similar to that of a shot glass such as plastic, as it is extremely common and commercially well known in the art in order to provide a stable support material as exemplified by Allen.

Lillelund does not appear to disclose that the container comprises an outer side surface comprising an outer mid section diameter thereof continuing to an

outer lower section diameter thereof which is larger than said outer mid section diameter, from more than two side cross-sections (i.e. a supportive base). However, it is also extremely well known in the art to provide such an outer lower section diameter in order to prevent spilling contents in the container. As disclosed above, Allen also discloses this conventional knowledge as shown in Figure 3, wherein Allen discloses that the wide base is provided to prevent spilling any contents in the container (column 1, lines 5-10). Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the container of Lillelund to include an outer side surface comprising an outer mid section diameter thereof continuing to an outer lower section diameter thereof which is larger than said outer mid section diameter, from more than two side cross-sections in order to prevent spilling contents in the container as exemplified by Allen.

Regarding claim 7, the reference of Lillelund in view of Allen is fully capable of omitting any anti-splash element comprising an inward angle greater than or equal to 90 degrees tangentially at any point between said inner mid section diameter and said inner upper section diameter. Concerning claim 8 the reference of Lillelund also discloses that said inward angle continuously increases at all points along said inner side surface from said inner mid section diameter to said inner upper section diameter as shown in Figure 3.

Claims 2-6 further requires that the inward angle comprises no more than approximately 15 degree angle tangential to any point from said inner mid section diameter to said inner upper section diameter. It would have been well

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within the purview of one of ordinary skill in the art to optimize the angle tangential to any point from said inner mid section diameter to said inner upper section diameter to no more than 15 degrees in order to maximize the sealing properties of the apparatus of Lillelund. Only the expected results would be attained.

Claims 9 and 10 further requires that the inner section ratio be approximately 1 to 0.875 between said inner mid section diameter and said inner upper section diameter. It would have been well within the purview of one of ordinary skill in the art to optimize the ratio between the inner mid section diameter and the inner upper section diameter in order to optimize the ratio of the apparatus in accordance with a specific operation. Only the expected results would be attained.

Claims 12 and 13 further requires that the fluid holding volume is approximately 37.5 cubic centimeters. It would have been well within the purview of one of ordinary skill in the art to optimize the fluid holding volume in order to maximize the appropriate amount of fluid needed for the usage of the apparatus. Only the expected results would be attained.

Claims 14-16 further requires that the inner side surface height be approximately 3 centimeters and the inner mid section diameter by approximately 4 centimeters. It would have been well within the purview of one of ordinary skill in the art to optimize inner surface height and inner mid section diameter in order optimize the size of the apparatus in accordance with a specific operation. Only the expected results would be attained.

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Claim 21 further requires that the outward angle comprise an approximately 30 degree angle tangential to at least one point from said outer mid section diameter to said outer lower section diameter. It would have been well within the purview of one of ordinary skill in the art to optimize the angle between the outer mid section diameter and the outer lower section diameter in order to maximize the stability of the apparatus. Only the expected results would be attained.

Claims 23 and 24 further requires that the outer mid section diameter and the outer lower section diameter be at a ratio of approximately 1 to 1.33. It would have been well within the purview of one of ordinary skill in the art to optimize the ratio between the outer mid section diameter and the outer lower section diameter in order to maximize the stability of the apparatus. Only the expected results would be attained.

Concerning claim 27, Lillelund in view of Allen discloses that the inner side surface, the outer side surface, said points along said inner side surface forming said inward angle, and said base comprises a single unitary article of fabrication as described above concerning claim 1. Lillelund in view of Allen do not appear to disclose the fluid holding volume or the angle between the inner mid section diameter to the inner upper section diameter. However, it would have been well within the purview of one of ordinary skill in the art to optimize fluid holding volume and the angle between the inner mid section diameter to the inner upper section diameter in order to maximize the sealing properties and the appropriate amount of fluid needed for the usage of the apparatus in accordance with a



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specific operation. Only the expected results would be attained. Regarding claims 25 and 28, the apparatus of Lillelund in view of Allen is fully capable of being in a sterile state suitable for utilization in surgical procedures.

3. Claims 26 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lillelund et al. (U.S. Patent No. 4,923,085) in view of Allen et al. (U.S. Patent No. 5,515,995) as applied to claim 1 and 28 above, and further in view of Mann (U.S. Publication No. 2004/0031721).

Lillelund in view of Allen is relied upon as set forth above. Lillelund in view of Allen does not appear to disclose that the apparatus is in combination with a surgical kit comprising the apparatus and at least one other item of surgical equipment. Mann discloses a surgical kit comprising and item of surgical equipment (paragraphs 12 and 13), and containers (110 & 130) that are capable of being utilized as an anti-spill apparatus. More specifically, the containers provide adequate support for preventing various specimens (paragraphs 25-26) inside said containers from spilling by their base portions. Therefore, they are anti-spill containers. Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to utilize the anti-spill apparatus of Lillelund in view of Allen in surgical kits comprising surgical equipment; as such apparatus are known to be utilized in surgical kits as exemplified by Mann.

### ***Response to Arguments***

4. Applicant's arguments, see pages 2-13, filed on September 8, 2008, with respect to the rejection(s) of claim(s) 1-10 and 12-29 under 35 USC 103(a) have

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been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Lillelund et al. (U.S. Patent No. 4,923,085) in view of Allen et al. (U.S. Patent No. 5,515,995).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KEVIN C. JOYNER whose telephone number is (571)272-2709. The examiner can normally be reached on M-F 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on (571) 272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service

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Representative or access to the automated information system, call 800-786-

9199 (IN USA OR CANADA) or 571-272-1000.

/Elizabeth L McKane/  
Primary Examiner, Art Unit 1797

KCJ